

UNITED STATES DISTRICT COURT
DISTRICT OF NEVADA

GEMINI INSURANCE COMPANY,)

3:14-cv-00121-LRH-WGC

Plaintiff,)

ORDER

vs.)

re: Doc. # 15

NORTH AMERICAN CAPACITY)
INSURANCE COMPANY,)

Defendant.)

Before the court is Defendant North American Capacity Insurance Company's (North American) Motion to Compel Plaintiff Gemini Insurance Company (Gemini) to Produce Documents and Privilege Log and for Sanctions. (Doc. # 15.)¹

I. Meet & Confer Prerequisite

For the court to consider any discovery motion, the parties are first required to meet and confer to attempt to resolve their discovery dispute. This obligation arises under both the Federal Rules of Civil Procedure (Rule 37(a)(1)) and the Local Rules of the United States District Court for the District of Nevada (Local Rule 26-7(b)). L.R. 26-7(b) provides as follows:

Discovery motions will not be considered unless a statement of the movant is attached thereto certifying that, after personal consultation and sincere effort to do so, the parties have been unable to resolve the matter without Court action. (Emphasis added)

Local Rule 26-7 parallels the language of its predecessor, Local Rule 190-1(f)(3). Both iterations required personal consultation among counsel before proceeding with a discovery motion.

A decision of the United States District Court regarding then L.R. 190-1(f)(2) discussed the importance of a sincere effort to resolve a discovery dispute, which absent unique circumstances, must involve personal consultation among counsel. *Shuffle Master, Inc. v. Progressive Games, Inc.*, 170

¹ Refers to court's docket number.

1 F.R.D. 166, 171 (D. Nev. 1996).

2 In *Shuffle Master, Inc.*, movant's attempts to comply with FRCP 37's meet and confer
3 requirements involved transmission of demand letters by fax and one telephone call to inform the
4 plaintiff that the plaintiff's discovery responses were incomplete. *Id.* The court concluded these efforts
5 did not constitute satisfaction of Rule 37. *Id.* The court explained "good faith cannot be shown merely
6 through the perfunctory parroting of statutory language on the certificate to secure court intervention;
7 rather it mandates a genuine attempt to resolve the discovery dispute through non-judicial means." *Id.*
8 at 171. The court stated a satisfactory meet and confer must entail "a personal or telephonic consultation
9 during which the parties engage in meaningful negotiations or otherwise provide legal support for their
10 position." *Id.* at 172.

11 The court has reviewed Mr. Grad's Declaration regarding his client's (North American's)
12 discovery to Plaintiff Gemini Insurance Company. (Doc. # 15-1.) It appears that North American served
13 its Request for Production upon Defendant Gemini on June 9, 2014. Gemini responded on July 8, 2014,
14 which, according to Mr. Grad mainly consisted of "extensive boiler plate objections." (*Id.* at 2, ¶ 8.)
15 Gemini also indicated it would produce documents responsive to Plaintiff's request but apparently could
16 not do so for another 35 days; Gemini's counsel apparently had not requested an extension from
17 opposing counsel. (*Id.*)

18 Gemini's response prompted a letter regarding Plaintiff's discovery from Mr. Grad which in turn
19 generated another series of letters and emails between counsel. (*Id.* at ¶¶ 9-15.) This exchange did not
20 include any telephonic communications among counsel, let alone "personal consultation." Based upon
21 the information presently before the court, it therefore does not appear to the court that defense counsel's
22 attempts to resolve the discovery issues complies with either Fed. R. Civ. P. 37(a)(1) or Local Rule
23 26-7.²

24 Although the court is critical of Mr. Grad's meet and confer efforts, the court appreciates his
25 apparent frustration with Plaintiff's counsel who, based upon the representations in the Declaration, has
26 somewhat cavalierly self-adopted discovery extensions without first consulting with opposing counsel.

27
28 ² The court is of the opinion that the obligation to attempt to informally resolve any discovery dispute imposes
reciprocal obligations upon counsel to meet and confer.

1 Plaintiff's counsel's apparent failure to respond to Defendant's counsel regarding a production date is also
 2 troubling. (Doc. # 15-1, ¶ 14). Despite not responding to Defendants' discovery request, Gemini's
 3 counsel nevertheless has reputedly been able to prepare a motion for summary judgment which
 4 apparently will be filed soon. (*Id.* at ¶ 15.)³

5 Now, therefore, before Plaintiff files its response to Defendant's motion to compel, supervising
 6 counsel vested with full decision-making authority shall meet in person to address and attempt to resolve
 7 their discovery disputes. Plaintiff's responsive memorandum shall explain in detail counsel's efforts to
 8 comply with Fed. R. Civ. P. 37(a)(1) and Local Rule 26-7.

9 **II. Special Order 109**

10 Defendant's motion to compel included 68 pages of exhibits. Counsel are reminded of their
 11 obligation to comply with § IV. D. of Special Order 109,⁴ which reads in pertinent part as follows:

12 **D. Paper Copies for Chambers**

13 Unless otherwise ordered by the court, Filing Users shall provide to chambers a paper copy of
 all electronic documents that exceed 50 pages in length.

14 Further, in accordance with Local Rule 10-3(a), exhibits submitted to the Court in paper form
 15 are to be tabbed. Counsel are directed to include an index of their exhibits with their paper copy.

16 Finally, the court requests when submitting the paper copy, Counsel utilize copies which contain
 17 the court's CM/ECF header filing information.

18 **IT IS SO ORDERED.**

19 DATED: August 1, 2014.

20 

21 WILLIAM G. COBB
 22 UNITED STATES MAGISTRATE JUDGE
 23
 24
 25

26 ³ If Plaintiff does file a motion for summary judgment, since (according to Defendant) Plaintiff has not satisfied its
 27 discovery production obligation, the court anticipates it will receive a Rule 56(d) request for deferral of the motion for
 28 summary judgment until after discovery – or at least that discovery relevant to the subject of the motion for summary
 judgment – has been completed.

⁴ Special Order 109 is found on the court's website, www.nvd.uscourts.gov/forms.aspx.